

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	CRIMINAL NO. 04-10361-NG
v.)	
)	
JOHN HANDY)	

**GOVERNMENT'S MEMORANDUM IN RESPONSE TO THE DISTRICT COURT'S
ORDER REQUESTING BRIEFS ON DUAL PROSECUTION**

The United States of America, by and through its attorneys, Michael J. Sullivan, United States Attorney, and Antoinette E. M. Leoney, Assistant United States Attorney, submits this memorandum in response to the order of the District Court (Gertner, J.) requesting briefs on the following issues raised by the United States Attorney's decision to seek a waiver of the Petite policy in order to prosecute the defendant, John Handy ("Handy").

- A. What issues does the Department of Justice's "Petite policy," which generally prohibits dual prosecution, raise for the federal prosecution of Handy for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1)?
- B. What effect, if any, does the Supreme Court decision in United States v. Lopez, 514 U.S. 549 (1995), have on the legality of dual prosecution?
- C. What is the significance of dual prosecution for the admissibility of the defendant's state court plea?

In summary, the Government responds to the Court's three questions as follows. First, application of the Petite Policy raises no issues with respect to this prosecution. Absent a showing of discriminatory bias, the United States Attorney is not accountable to the Court whether a waiver of the Petite policy

was sought from the Department of Justice in order to prosecute Handy. The Petite policy is not a constitutional mandate and confers no rights on Handy. In fact, however, the United States Attorney approved, as an initial matter, the dual prosecution of Handy and thereafter sought and received a waiver of the Petite policy from the Department of Justice.

Second, the Supreme Court decision in United States v. Lopez legitimizes dual prosecution. The legality of dual prosecution rests upon the doctrine of dual sovereignty, which is a fundamental principle of federalism. Moreover, the First Circuit and its sister circuits have repeatedly held that Lopez has no bearing on the constitutionality of 18 U.S.C. § 922(g).

Third, Handy's state guilty plea should be admissible in a federal prosecution for felon in possession of a firearm even if the state court did not inform Handy of the possible federal consequences of his plea. As regards Handy, the state and federal prosecutors did not act in concert: no federal authorities were involved in Handy's case until well after Handy had pled guilty and been sentenced in state court.

FACTUAL BACKGROUND

In May, 2004, a reliable confidential informant ("CI") informed Massachusetts State Police Trooper Edward McDonald ("McDonald") that an individual named "Joe," later identified as the defendant, Handy, was selling heroin in Brockton,

Massachusetts. (See Ex. A ¶¶ 2-4; Ex. B ¶ 1.) The CI completed two controlled narcotics purchases inside the residence of 41 Weston Street, Brockton, MA, for McDonald, and McDonald subsequently applied for and received a state search warrant for the residence. (See Ex. B ¶¶ 1-2.)

On June 2, 2004, at approximately 6:45 p.m., McDonald and officers from the Massachusetts State Police and the Brockton Police narcotics unit executed the search warrant at 41 Weston Street. (See Ex. B ¶ 3) They knocked and announced their presence, and when no one answered the door, they made a forceful entry to conduct the search. Id. The officers found Handy inside a bedroom in the dwelling, and in their search, they discovered a plastic bag containing a tan substance, which they suspected of being heroin, in the second floor hallway; one fully loaded Smith and Wesson .38 caliber special handgun under the floor board in a bedroom; and miscellaneous paperwork and mail addressed to "John Handy" at 41 Weston Street in a drawer in the same bedroom where the gun and Handy were found. (See Ex. B ¶ 3; Ex. D.) The officers arrested Handy, advised him of his Miranda rights, and transported him to the Brockton Police Department. (See Ex. B ¶ 4.) At 8:02 p.m. that same evening, Handy was booked and charged with possession of a Class A substance, unlicensed possession of ammunition, and unlicensed possession of a firearm. (See Ex. C.)

On July 1, 2004, Handy appeared in Brockton District Court, and after the court dismissed the ammunition charge, Handy pled guilty to the unlicensed possession of a firearm and the possession of a Class A controlled substance charges. The Court should note that Handy was not charged by the state with being a felon in possession of a firearm and ammunition, and accordingly he did not plead to such offenses. The Brockton District Court sentenced him to six months commitment on each count to be served concurrently. On August 17, 2004, Handy received an additional state sentence due to a probation violation triggered by his plea.

Shortly after Handy pled guilty, the Plymouth District Attorney's Office realized that Handy had not been prosecuted using the state armed career criminal statute with its mandatory fifteen year term of incarceration. See Mass Gen. Laws 269 § 10G(c). As a result, the Plymouth District Attorney's office referred the case to the United States Attorney's Office.

The Assistant United States Attorney in charge of the case, Marianne Hinkle, sought approval for a waiver of the Justice Department's dual prosecution policy from the United States Attorney, Michael J. Sullivan, who approved her request and applied to the Department of Justice for a waiver on November 3, 2004. On November 16, 2004, the Department of Justice granted the waiver, and on December 8, 2004, the Grand Jury indicted

Handy for being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. 922(g)(1). On July 12, 2005, Handy was arraigned in federal court on one count of violating 18 U.S.C. 922(g)(1).

ARGUMENT

I. The United States Attorney's decision to seek a waiver of the internal Justice Department policy on dual prosecution raises no reviewable issues for the District Court.

The Department of Justice's policy on dual prosecution raises no reviewable issues in United States v. John Handy for the District Court. "[F]ederal prosecution is not barred by a prior state prosecution of the same person for the same acts." Abbate v. United States, 359 U.S. 187, 194 (1959). In order to undertake a dual prosecution, the United States Attorney must obtain a waiver of the Petite policy, an "internal Justice Department policy forbidding federal prosecution of a person for alleged criminality which was 'an ingredient of a previous state prosecution against that person' to which exceptions are made only if the prosecution will serve 'compelling interests of federal law enforcement.'" United States v. McCoy, 977 F.2d 706, 712 (1st Cir. 1992) (citing Thompson v. United States, 444 U.S. 248, 248 (1980)). The policy, however, is merely administrative, and although the availability of dual prosecution rests solidly on the dual sovereignty inherent in the federal system, the Petite policy is "not a matter of constitutional law." Id.

(citing United States v. Booth, 673 F.2d 27, 30 (1st Cir. 1982)); see also Rinaldi v. United States, 434 U.S. 22, 28-29 (1977) (explaining that the Petite policy is "not constitutionally mandated"). The First Circuit has held that "the Petite policy and cases construing it stand only for the proposition that the government's motion to dismiss should be granted when it discovers that it is conducting separate prosecutions for the same offense" and that "the doctrine does not create a corresponding right in the accused." McCoy, 977 F.2d at 712 (quoting Booth, 673 F.2d at 30); see also United States v. Gary, 74 F.3d 304, 313 (1st Cir. 1996) ("We have repeatedly held that the Petite policy does not confer substantive rights on criminal defendants"). The United States Attorney's decision to seek a waiver of the Petite policy was an act of prosecutorial discretion, which, absent a showing of improper bias, is not reviewable by the District Court; the defendant cannot seek relief based on the Petite policy; and the government has not moved to dismiss the case pursuant to the policy. The District Court therefore has no grounds for considering the relation of the Petite policy to the federal prosecution of Handy.

1. The United States Attorney is not accountable to the District Court for his prosecutorial decisions absent evidence of discriminatory bias.

The District Court should not review the United States Attorney's prosecutorial decision to seek a waiver of the Justice

Department's internal policy on dual prosecution. Absent a showing of a discriminatory motive, the United States Attorney has "broad discretion to enforce the Nation's criminal laws." United States v. Armstrong, 517 U.S. 456, 464 (1996) (citing Wayte v. United States, 470 U.S. 598, 607 (1985)). In an "ordinary case," the District Court should grant the United States Attorney's decisions a "presumption of regularity." Id.; see also United States v. Peterson, 233 F.3d 101, 105 (1st Cir. 2000) ("We presume that the prosecutor acted in good faith." (quoting United States v. Bassford, 812 F.2d 16, 19 (1st Cir. 1987))). The fundamental rule regarding prosecutorial discretion is that "[as] long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." Id. (citing Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978)). As the Supreme Court explained in Wayte v. United States, 470 U.S. 598 (1985), generally courts are not competent to analyze "the strength of [a] case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan." 470 U.S. at 607-08. Judicial review of prosecutorial discretion creates "systemic costs" by delaying criminal proceedings, by "threaten[ing] to chill law enforcement by

subjecting the prosecutor's motives and decision making to outside inquiry and [by undermining] prosecutorial effectiveness by revealing the Government's enforcement policy." Id.; see also United States v. Smith, 178 F.3d 22, 26 (1st Cir. 1999) ("The exercise of prosecutorial discretion, at the very core of the executive function, has long been held presumptively unreviewable." (quoting In re Sealed Case, 131 F.3d 208, 214 (D.C. Cir. 1997))). Therefore, the District Court should not second-guess the United States Attorney's decision to prosecute Handy and should not substitute its judgment for his in the "performance of a core executive constitutional function." Armstrong, 517 U.S. at 465.

2. The Petite Policy confers no rights upon the defendant.

Handy cannot ask the District Court to review the United States Attorney's decision to seek a waiver of the Petite policy. The First Circuit and the other courts of appeal have consistently held that the Justice Department's internal policy on dual prosecution confers no substantive rights on a defendant. See McCoy, 977 F.2d at 712 ("[T]he doctrine does not create a corresponding right in the accused) (quoting Booth, 673 F.2d at 30)); see also, e.g., United States v. Wilson, 413 F.3d 382, 389 (3d Cir. 2005) (The Petite policy "do[es] not create enforceable rights for criminal defendants"); United States v. Howard, 590 F.2d 564 (4th Cir. 1979) (same); United States v. Rodriguez, 948

F.2d 914, 915 (5th Cir. 1991) (same); United States v. Renfro, 620 F.2d 569, 574 (6th Cir. 1980) (same); United States v. Jones, 808 F.2d 561, 565 (7th Cir. 1986) (same); United States v. Lester, 992 F.2d 174, 176 (8th Cir. 1993) (same); United States v. Snell, 592 F.2d 1083, 1088 (9th Cir. 1979) (same); United States v. Thompson, 579 F.2d 1184, 1186 (10th Cir. 1978) (same); United States v. Alston, 197 U.S. App. D.C. 276 (D.C. Cir. 1979) (same). Given the unanimity of the courts of appeal, the District Court should not consider any request by Handy for relief based on the Justice Department's administrative policy, nor should the Court entertain any such thing on its own accord.

3. The United States Attorney has not asked the District Court to offer Handy relief from dual prosecution pursuant to the internal Justice Department policy.

The United States Attorney has not moved to dismiss the case against Handy because it accidentally undertook a dual prosecution in violation of Justice Department policy, and therefore, the District Court has no ground for reviewing the United States Attorney's decision to obtain a waiver of the Petite policy. See McCoy, 977 F.2d at 712 (explaining that the Petite policy only provides for granting the government's motion to dismiss when it discovers an unintended dual prosecution (citing Booth, 673 F.2d at 30)); see also Petite v. United States, 361 U.S. 529 (U.S. 1960) (remanding a case to the lower court to vacate its judgment because the government sought remand). In the instant case,

waiver of the Petite policy has been reviewed and approved in the United States Attorney's Office and in the Department of Justice. See USAM Section 9-2.031.

The United States Attorney's decision to seek a waiver of the Petite policy was well-considered and consistent with Department of Justice requirements, and an Assistant Attorney General of the United States approved the waiver. The United States Attorney has not moved to dismiss the case against Handy, and therefore, the District Court has no grounds for considering the effect of the Petite policy on the case at bar.

II. The Supreme Court decision in United States v. Lopez has no bearing on the legality of the dual prosecution of Handy.

The Supreme Court decision in United States v. Lopez rests on a recognition of the dual sovereignty of the State and the Federal governments that ungirds the power of the Plymouth District Attorney and the United States Attorney to prosecute Handy for the same act. See 514 U.S. at 575-76 (Kennedy, J., concurring) (discussing the dual sovereignty and federalism). In Lopez, the Court ruled that the Commerce Clause does not give Congress the power to criminalize possession of a firearm within 1000 feet of a school because, on its face, such possession does not substantially affect interstate commerce and because the States and the Federal governments are separate sovereigns with overlapping but different powers. Id. at 551-52. The Court

explained that then 18 U.S.C. § 922(q) did not have sufficient jurisdictional language tying it to interstate commerce, but the Court did not question Congressional power to regulate acts that do affect interstate commerce. See id. Since Lopez, the First Circuit has repeatedly held that 18 U.S.C. § 922(g), the statute under which Handy has been charged, is a valid exercise of Congressional power and has sufficient jurisdictional language. See United States v. Cardoza, 129 F.3d 6, 10-11 (1st Cir. 1997) (calling an extension of Lopez to section 922(g) "hopeless on . . . the law" (quoting United States v. Blais, 98 F.3d 647, 649 (1st Cir. 1996), cert. denied, 117 S. Ct. 1000 (1997)) (collecting cases); see also United States v. Darrington, 351 F.3d 632, 634 (5th Cir. 2003) (holding that section 922(g) is a valid exercise of Congressional power); United States v. Mitchell, 299 F.3d 632, 635 (7th Cir. 2002) (same). Lopez therefore has no direct bearing on the federal prosecution of Handy for violating 18 U.S.C. § 922(g)(1).

The Lopez Court's defense of federalism does not implicate the legality of dual prosecution as such because federalism creates the possibility of dual prosecution. The Constitution does not "deny the State and Federal Governments the power to prosecute for the same act," Rinaldi, 434 U.S. at 28, because it enshrines the dual sovereignty of the State and Federal governments. Id. at 29. As the Court explained in Heath v.

Alabama, 474 U.S. 82 (1985), dual prosecution does not violate the Double Jeopardy Clause because "[w]hen a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" 474 U.S. at 88 (quoting United States v. Lanza, 260 U.S. 377, 382 (1922)); see also United States v. Bouthot, 685 F. Supp. 286, 293 (D. Mass. 1988) (holding that unlicensed possession of a firearm under Mass. Gen. Laws. § 10 and being a felon in possession of a firearm in violation of 18 U.S.C. § 922 are separate statutory offenses). Absent a showing that the federal prosecution of Handy has compromised dual sovereignty and therefore threatened the federal system, the Lopez Court's defense of federalism raises no issues for the case at bar.

Moreover, the constitutionality of dual prosecution is well-established. See Heath, 474 U.S. at 93 ("[T]he Federal Government has the right to decide that a state prosecution has not vindicated a violation of the 'peace and dignity' of the Federal Government." (citation omitted)). The dual sovereignty of the federal system that allows for dual prosecution "is not simply a fiction that can be disregarded in difficult cases" because "it is axiomatic that '[in] America, the powers of sovereignty are divided between the government of the Union, and those of the States.'" Id. at 92-93 (quoting McCulloch v. Maryland, 4 Wheat. 316, 410 (1819)). As the First Circuit has

noted, "[i]f a precedent of [the Supreme] Court has a direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." Medeiros v. Vincent, 431 F.3d 25, 34 (1st Cir. 2005) (quoting Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989)). In the instant case, where Supreme Court precedents apply and the First Circuit has not questioned the basic validity of dual prosecution, it is not for the District Court to re-examine long-standing principles. See United States v. Ivery, 427 F.3d 69, 75 (1st Cir. 2005) (noting that lower courts should not "anticipate the Supreme Court's reconsideration of its prior rulings").

III. Handy's state court guilty plea should be admissible in a federal prosecution for violating 18 U.S.C. § 922(q)(1).

Handy's state court guilty plea should be admissible in the instant case. The threshold issue is whether Handy's plea was valid. A guilty plea "entered by one fully aware of the direct consequences . . . must stand unless induced by threats . . . misrepresentation . . . or perhaps by [bribes]." United States v. Bouthot, 878 F.2d 1506, 1511 (1st Cir. 1989) (citing Shelton v. United States, 242 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting), quoted with approval in Brady v. United States, 397 U.S. 742, 755 (1970)). However, since the "state and federal

systems are separate and distinct," a defendant "need only be informed of the direct consequences he may face within the particular system." Bouthot, 878 F.2d at 1511 (quoting United States v. Long, 852 F.2d 975, 979 (7th Cir. 1988)). Handy's guilty plea is valid unless he can show evidence that he was not fully aware of the direct state consequences of his plea or that he was subject to threats, misrepresentations, or bribes.

Absent such a showing, his state court plea is admissible in subsequent proceedings as a prior conviction. The Supreme Court has explained that "[a] guilty plea is more than a confession which admits that the accused did various acts; it is itself a conviction." Boykin v. Alabama, 395 U.S. 238, 242 (1969). Federal Rule of Evidence 803(22) states that the hearsay rule does not bar evidence of a previous conviction and that a previous conviction is admissible to prove the truth of the matter asserted. See Fed. R. Evid. 803(22). Handy's state court guilty plea is admissible as evidence of his prior conviction.

Handy may argue that he was not fully aware that his guilty plea could lead to federal prosecution or that the state has orchestrated the federal prosecution, but these arguments are unavailing. The First Circuit has held that a failure to inform a defendant about potential federal consequences of a state court plea does not invalidate the plea or prevent its use in subsequent federal proceedings so long as state and federal

prosecutors did not act "in concert." Bouthot, 878 F.2d at 1511, 1512 n.4. To the extent that state and federal prosecutors act in concert, they may violate the dual sovereignty that ungirds the dual prosecution powers of the State and Federal governments. See Bartkus v. Illinois, 359 U.S. 121, 123-24 (1959) (suggesting that where one sovereign is "merely a tool" of the other, the principle of dual sovereignty may be violated). However, the First Circuit and its sister courts of appeal have held that even extensive collaboration between state and federal authorities does not violate dual sovereignty. See United States v. Guzman, 85 F.3d 823, 827 (1st Cir. 1996) (limiting "sham prosecution" to "situations in which one sovereign so thoroughly dominates or manipulates the prosecutorial machinery of another that the latter retains little or no volition in its own proceedings"); United States v. 38 Whalers Cove Drive, 954 F.2d 29, 38 (2d Cir. 1991) (same); United States v. Paiz, 905 F.2d 1014, 1024 (7th Cir. 1990) (explaining that the "sham prosecution" exception to the legality of dual prosecution is "extremely narrow") (collecting cases). The Guzman Court held that a defendant "must produce some evidence tending to prove that . . . one sovereign was a pawn of the other, with the result that the notion of two supposedly independent prosecutions is merely a sham" before the government "must shoulder the burden of proving that one sovereign did not orchestrate both prosecutions." 85 F.3d at

827. In United States v. Campusano, 947 F.2d 1 (1st Cir. 1991), the Court refused to find that state and federal authorities had acted in concert where state and federal law enforcement officers jointly participated in an arrest and collaborated in collecting and retaining evidence. 947 F.2d at 5. The Court allowed the use of a guilty plea to drug trafficking and unlicensed possession of a firearm and the corresponding plea colloquy in a federal prosecution for using or carrying a firearm during a drug trafficking crime even though the defendant had not been informed of the possible federal consequences of his state plea. Id.

In the instant case, no federal authorities were involved until after Handy pled guilty in state court. State prosecutors contacted the United States Attorney's Office after Handy was sentenced. Since that time, the United States Attorney has independently controlled the federal prosecution of Handy for violating 18 U.S.C. § 922(g)(1). In other words, the Plymouth District Attorney's Office has played no role whatsoever in this federal prosecution of Handy, just like the United States Attorney's Office played no role in the prior state prosecution of Handy. There is thus no evidence that the Plymouth District Attorney's Office has so "dominated" the Department of Justice that the Department has retained little or no volition of its own. See Guzman, 85 F.3d at 827. Given that the state and federal authorities have acted as separate sovereigns, Handy's

state court guilty plea should be admissible in the case at bar.

CONCLUSION

WHEREFORE, for all the reasons advanced above, the government respectfully submits that the United States Attorney's prosecutorial decision to seek a waiver from the internal Justice Department policy on dual prosecution raises no reviewable issues for the District Court.

Respectfully submitted,

MICHAEL J. SULLIVAN,
United States Attorney

By: /s/Antoinette E.M. Leoney

ANTOINETTE E.M. LEONEY

Assistant U.S. Attorney

Dated: August 14, 2006

(617) 748-3100

CERTIFICATE OF SERVICE

Suffolk, ss.

August 14, 2006

I hereby certify that a copy of the foregoing was served electronically this day upon counsel for the defendant, Timothy G. Watkins, Esq., Federal Defender's Office, 408 Atlantic Avenue, 3rd Floor, Boston, MA 02210.

/s/Antoinette E.M. Leoney

ANTOINETTE E.M. LEONEY

EXHIBIT

A

BROCKTON, SS.

ROCKTON DISTRICT COURT
DOCKET # 040526-KM-1

102797

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT
G.L. c. 276, ss, 1 to 7; St. 1964, c. 557

05/26/04

I, Edward T. McDonald, being duly sworn, depose and state that the following is true to the best of my knowledge and belief:

1. I am a Massachusetts State Police Officer. I have been so employed since October of 1993. During my career as a State Police Officer, I have been assigned to both the Uniformed Branch, and the Bureau of Investigative Services. Presently, I am assigned to the narcotics section of the Plymouth County District Attorney's Office. My duties include but are not limited to the investigation of narcotics violations and offenses. Prior to becoming a state trooper I was employed by the Metropolitan Police Department, Washington D.C. from 1990 thru 1993. During my career as a law enforcement officer I have attended several narcotic seminars and courses. I have also been involved in approximately four hundred and seventy five narcotics arrests. I have had the opportunity to work with and be trained by more experienced officers in the investigation of major narcotics organizations.

2. In the course of performing my duties as a police officer, I have been involved in narcotics purchases as an undercover police officer. I have participated in various aspects of narcotics investigations including controlled purchases, controlled deliveries, undercover purchases, rips and surveillance. As a result of my experience and training I am familiar with most aspects of the narcotic trade, the various means of negotiations, communication, and transportation as well as the appearance, packaging, texture and smell of certain narcotics. I am familiar

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with the vernacular, and/or code words and terms, which sellers and users of narcotics use. As a police officer I have worked with members of the U.S. Alcohol Tobacco and Firearms, Federal Bureau of Investigation and U.S. Drug Enforcement Agency in cases involving narcotics and firearms offenses.

3. During the Month of May 2004, this affiant met with a confidential reliable informant, hereinafter referred to as CI#1, regarding heroin distribution occurring within the City of Brockton. CI#1 is familiar with the packaging and distribution of heroin, having been involved in the purchasing and usage of heroin for the past several years. CI #1 advises that it can purchase heroin in the city of Brockton from a person known to it as "Joe". CI#1 states it would dial cellular telephone number (774) 274-9820 to make arrangements with "Joe" to purchase an amount of narcotics (heroin). Arrangements would then be made to meet at a public location within the City of Brockton or at "Joe's" residence of 41 Weston Street, Brockton, MA. CI#1 states it has been purchasing heroin from "Joe" for approximately one year. CI#1 states "Joe" lives at 41 Weston Street, Brockton. CI#1 describes "Joe" as a black male, approximately 30 yrs. of age, 5'08 in height, 190 in weight, husky build, short brown hair, brown eyes.

4. CI#1 has proven reliable in the past. During the months of February and March 2004, CI#1 provided this affiant with information concerning crack cocaine distribution by a Hispanic male known to it as "Little" within the City of Brockton. CI#1 conducted several controlled purchases of narcotics (crack cocaine) from "Little" for this affiant. This affiant identified "Little" as Jose A. Figueroa, DOB 08/04/83 and his co-conspirator Leisa A. Lorenzi, DOB 04/03/71. Figueroa and Lorenzi resided at 26 Short Street, Apartment B, Randolph, MA and dealt crack

cocaine daily within the city of Brockton. This officer sought and received search warrants from Brockton District Court for Lorenzi's 2000 Jeep Ma Registration 8240JI and their residence of 26 Short Street, Apartment B, Randolph, MA. Both search warrants were executed and seized were 102 twists of crack cocaine, two handguns, 140 rounds of ammunition, and \$6568.00 in U.S. Currency. Figueroa and Lorenzi were placed under arrest and charged with 1) Possession with Intent to Distribute Class B Substance, 2) Conspiracy To Violate the Controlled Substance Act, 3) Drugs School Zone, 4) Unlawful Possession Firearm (two counts), 5) Unlawful Possession Ammunition. Both Figueroa and Lorenzi are currently awaiting trial in Brockton and Quincy District Courts.

5. On or about May 22, 2004, CI#1 agreed to make a controlled purchase of heroin from "Joe" in the city of Brockton for this affiant. CI#1 was searched by this affiant and found to have no narcotics or monies on its person. This affiant gave CI#1 an amount of U.S. Currency to complete the narcotics transaction. CI#1 then dialed cellular telephone number (774) 274-9820 and made arrangements with "Joe" to purchase an amount of narcotics (heroin) for this affiant. This affiant conducted surveillance. This affiant observed CI#1 travel to 41 Weston Street, Brockton and enter the aforementioned address through the left side door. After the controlled narcotics purchase this affiant met with CI#1 and CI#1 gave to this officer the narcotics (heroin) it purchased from "Joe". At the Middleboro State Police Barrack the contraband was field tested with positive results for the presence of heroin.

6. A check with Eastern Utilities Security reveals the only service at 41 Weston Street, Brockton to be in the name of Shirelle Carrigan with a listed

telephone number of (508) 894-2882, SSN# 010583150, and has had service since 05/02/03. A check with the Brockton Assessor's Office on 41 Weston Street, Brockton reveals the owner to be Shirelle Carrigan. Furthermore, the Brockton Assessor's Office lists 41 Weston Street, Brockton as a single family residential dwelling. A check with the Massachusetts Registry of Motor Vehicles on license number #010583150 reveals it to be listed to Shirelle Carrigan, DOB 11/05/63, SSN 010583150, of 229 Columbia Road, Apartment 4, Dorchester, MA. A check with the Massachusetts Board of Probation on Shirelle Carrigan, DOB 11/05/63, reveals 14 adult arraignments, two of which are narcotics offenses; 1) Possession With Intent To Distribute Class D and 2) Conspiracy To Violate Controlled Substance Act.

7. On or about May 26, 2004, CI#1 agreed to make a controlled purchase of heroin from "Joe" in the city of Brockton for this affiant. CI#1 was searched by this affiant and found to have no narcotics or monies on its person. This affiant gave CI#1 an amount of U.S. Currency to complete the narcotics transaction. CI#1 then dialed cellular telephone number (774) 274-9820 and made arrangements with "Joe" to purchase an amount of narcotics (heroin) for this affiant. This affiant conducted surveillance. This affiant observed CI#1 travel to 41 Weston Street, Brockton and enter the aforementioned address through the left side door. After the controlled narcotics purchase this affiant met with CI#1 and CI#1 gave to this officer the narcotics (heroin) it purchased from "Joe". At the Middleboro State Police Barrack the contraband was field tested with positive results for the presence of heroin.

8. Investigators know from prior narcotic investigations that drug dealer's

activities concerning their illicit enterprise interconnect many aspects of their legitimate lives. These areas concern their primary residences, motor vehicles, electronic communications (beepers, cellular telephones, faxes, computers) and assorted personal identification needed to maintain legitimacy. Drug dealers will often times provide false information concerning rental agreements, motor vehicle registrations, licenses, birth certificates, telephone numbers, family members, place of birth and social security numbers. Drug dealers often times maintain a primary and secondary residence to secrete their drugs and its proceeds. At these residences drug dealers also maintain records of drug quantities and monies owed or received from sales. These records are often referred to as "cuff sheets". Drug dealers alternate locations regularly where the drugs and proceeds are kept. Drug dealers utilize an assortment of motor vehicles, some equipped with after market hides to secrete drugs, registered to parties other than themselves, and often times utilize rental vehicles to further their illicit enterprise. During this target investigation we have identified many of these stated facts to be true. To complete a thorough investigation of a drug dealers activities investigators know that often times what appears to be legitimate is a camouflage to frustrate law enforcements investigative efforts. Whether intentional or not a drug dealer creates a nexus that envelopes his entire structural existence.

9. It is this affiant's opinion that "Joe" is engaged in a continuing narcotics enterprise (heroin). This opinion is based on the following;

- a. CI#1 provided information to this affiant that "Joe" has an ongoing narcotics (heroin) enterprise and it states it has purchased heroin from "Joe" in the past and no requests have been denied.
- b. CI#1 was able to arrange for two controlled purchases of narcotics (heroin) from "Joe". Both of which were conducted inside of 41 Weston Street, Brockton,

MA.

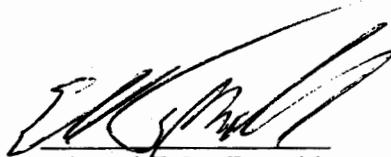
- c. CI#1 provided the cellular telephone number (774) 274-9820, which "Joe" uses to further his illegal narcotics distribution (heroin). This affiant has corroborated this information by calling the telephone number and arranging for two controlled purchases of illegal narcotics (heroin).
- d. The controlled purchases made by CI#1 are consistent with the descriptive qualities of narcotics, how they are packaged and presented for distribution. This officer is familiar with the descriptive qualities of narcotics (heroin) from previous training, experience and undercover purchases.
- e. It is this affiant's opinion that the primary residence and distribution point of "Joe's" narcotics (heroin) is 41 Weston Street, Brockton, Massachusetts. This opinion is based on information provided by CI#1 and the completion of two controlled purchases of narcotics (heroin) at the aforementioned location.

10. Based upon the foregoing reliable information, and upon my personal knowledge and belief and attached affidavits, there is probable cause to believe that the property hereinafter described (has been stolen, or is being concealed, etc.) Heroin a class "A" substance, in Violation of Chapter 94C, Section 32, M.G.L.A. and may be found in the possession of "Joe" or any other person present who may be found to have such property on his or her person or under his or her control located at 41 Weston Street, Brockton, Massachusetts.

11. The property for which I seek the issuance of a search warrant is the following: Heroin a Class "A" substance, all controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of Chapter 94C, M.G.L.A. All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing,

delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of Chapter 94C, M.G.L.A. All books, records and moneys, computers, disks, floppy discs, used or intended for use in the procurement, manufacture, compounding, processing, delivery or distribution.

12. Wherefore, I respectfully request that the court issue a warrant and order seizure, authorizing the search of 41 Weston Street, Brockton, Massachusetts which is more particularly described as a two and half story single family residential dwelling, wooden shingle siding, peach in color having white trim with a gray asphalt colored gambrel roof. On the top sides of the house the shingles have faded to a natural wood color. There are three brick chimneys on the roof. If standing on Weston Street facing the building there is a driveway to the right side of the house. If you go down the driveway there is a set of stairs that lead to a wooden porch which lead to a wooden door. The part of the house that faces Weston Street does not have a door, the first floor has two bay windows and the second floor has three windows and to the right side there is a carousel style wooden porch, in front of this porch on the lawn there is a white mailbox with the number #41 on it. On the left side of the house there is a concrete walkway that leads to a white wooden door with glass windows, once inside this door there is another door to the left, this is the door we seek access and directing that if such property or evidence or any part thereof be found that it be seized and brought before the BROCKTON DISTRICT Court, together with such other and further relief that the court may deem proper.



Edward T. McDonald
MASSACHUSETTS STATE POLICE

Then personally appeared the above named Edward T. McDonald and made oath
that the foregoing by him subscribed is true.

Before me,

Karen M. Leach
5/26/04

I received the attached search warrant on July 26th, 2004
and have executed it as follows:

On JUNE 2nd, 2004, at 1845 o'clock P M., I searched
(the person) _____ described in the warrant and (the premises) _____
41 WESTON STREET, Brockton

The following is an inventory of property taken pursuant to the warrant:

1. ONE PLASTIC BAGGIE CONTAINING A TAN SUBSTANCE (Heroin) / 1 and 1/2 baggies / T.D.A. J. ARRESTO
2. Loaded (six rounds - .38 sp. 1.4 mil) Smith & Wesson - .38 sp. Handgun Serial # 182932 INSIDE A BLACK LEATHER HOLSTER / UNDERRUGGED IN BODOR RUG / OWNED G. KHOURY,
3. 14156 PISTOL IN THE NAME JOHN HARRY / BODOR RUG OWNED / T.D.A. P. COLEMAN
DET. T. KELTNER

No. 040626 MAC-1
2004
DISTRICT COURT DEPARTMENT
Brockton DIVISION
COURT

COMMONWEALTH

vs.

Controlled Substance

SEARCH WARRANT

G.L. c. 276, ss. 1 to 7
(St. 1964, c. 557)

This warrant must be returned
to the district court named within
seven days of its issue.

This inventory was made in the presence of Lieutenant A. Thomas, T.D.A. P. Coleman
and T.D.A. E. D'Inacio. I swear that this inventory is a true and detailed account of all the property taken by me on the

Subscribed and sworn to and returned before me this 2nd day of JULY

K. M. Caw
Clerk
Assistant Clerk

Applicable clauses.

JACK ERTH
CARRAGAN

**MASSACHUSETTS STATE POLICE
HANMPHIRE/FRANKLIN NARCOTICS**

१०३

948

Supplement to CG#

Trooper
From:

Subject:

Defendant(s) : HANDY TOFFEE LTD. - 04/04/63

Location: 41 W E S T M ST
Date & Time: 06/03/04, 18

Location: 41 Western St
Date & Time: 06/02/04, 1845hrs

Inventory of property seized pursuant to Search Warrant

624

10

CST#:	Location:	Description of Evidence	Location of Evidence	Evidence found by:
Item #				
1		1 TWIST OF HEROIN 2 FIREARM SMITH & WESSON 38 SPECIAL (K 182772)	2nd Fl HALLWAY UNDER FLOOR BOARD IN Handy's Bedroom	TPE ARRESTO
2		3 PAPERWORK IN NAME OF JOHN HARDY	Handy's BEDROOM DRAWER	DET KHOVY TPE COLEMAN/KEITH

EXHIBIT

B

*The Commonwealth of Massachusetts
Department of State Police*

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

EDWARD A. FLYNN
Secretary

COLONEL THOMAS J. FOLEY
Superintendent

Plymouth County Detectives

326 West Grove Street

Middleboro, MA 02346

Tel. (508) 923-4205 Fax (508) 923-4210

06/03/04

TO: Detective Lieutenant Joseph V. Mason, Commanding Officer
Detective Unit - Plymouth County District Attorney

FROM: Trooper Edward T. McDonald, #2405
Detective Unit - Plymouth County District Attorney

SUBJECT: Narcotics Arrest: 1) John H. Handy, DOB 04/04/63, Execution
of Search Warrant: 41 Weston Street, Brockton, MA
Case # 04-113-0248

1. During the month of May this officer conducted a narcotics investigation in the city of Brockton. This officer received reliable confidential informant information that an unknown black male aka "Joe" (later identified as John Handy, DOB 04/04/63, of 41 Weston Street, Brockton, MA) was distributing narcotics (heroin) within the city of Brockton. The informant successfully completed two controlled purchases of narcotics from Handy for this officer. Both controlled purchases occurred inside the residence of 41 Weston Street, Brockton, MA which is a single family residential dwelling.

2. On May 26, 2004, this officer sought and received a search warrant from Brockton District Court for 41 Weston Street, Brockton, MA

3. On June 02, 2004, members of the Massachusetts State Police (Plymouth County District Attorney's Ofc) Lieutenant A. Thomas, Sergeant J. White, Troopers P. Coleman, J. Gilmore, D. LeVangie, J. Arroyo and members of the Brockton Police (Narcotics Unit) Detectives G. Khouri, J. Costello, T. Keating, J. Stanton along with this officer executed the aforementioned search

warrant. At approximately 1845hrs. officers made a forceful entry into 41 Weston Street, Brockton after Knocking and Announcing State Police Search Warrant was met with no answer. A search of the dwelling revealed the following: 1) one plastic baggie containing a tan substance suspected heroin/2nd Floor Hallway/Tpr. J. Arroyo, 2) Loaded (six rounds .38spl ammo) Smith and Wesson .38 special Handgun Serial # 182972 inside a Black Leather Holster/under floorboard in bedroom/Det. G. Khoury, 3)Misc paperwork in the name of John Handy/Bedroom Drawer/Tpr. P. Coleman and Det. T. Keating.

4. Handy was placed under arrest, advised of Miranda rights (Lt. A. Thomas) and transported to Brockton Police Department. (BPD Cr.). At Brockton P.D. Handy was booked and advised of rights and held pending court or bail. Charges: 1) Poss Cl A (heroin), 2) Unl Poss Ammunition, 3) Unl Poss Firearm.

6. This officer requests case status be classified CLOSED/ARREST.

Respectfully Submitted,

Trooper Edward T. McDonald, #2405
Detective Unit
Plymouth County District Attorney

INDEX:

John H. Handy, DOB 04/04/63, SSN 028544092
41 Weston Street,
Brockton, MA

EXHIBIT

C

OBTN
TBRO000037718**BROCKTON POLICE DEPARTMENT**
Arrest Booking ReportCase No.
04006829**ARRESTEE**

Arrestee Name (Last, First, Middle Initial) HANDY, JOHN H.							Arrest No. 00023663	Social Security No. [REDACTED]		Caution	
Address 42/THEODORE ST, DORCHESTER, MA							Scars, tattoos, etc. L.EYE L.WRIST				
Sex M	Race B	Height 510	Weight 180	Hair BLK	Eyes BRO	Build STK	Complexion MEDIUM	Marital Status SINGLE	D.O.B. [REDACTED]	Age 41	Place of Birth
Father's Name			Mother's Maiden Name			Wife's Maiden Name			Husband's First Name		Weekly Wage 180
Occupation PAINTER			Employer PETER HANDY			Alias/Nickname 1					
Alias/Nickname 2						Alias/Nickname 3					

CHARGE

Charge(s)	MGL Chapter/Section	Warrant Number
1) UNL POSS FIREARM	269-10H	
2) UNL POSS AMMUNITIO	269-1007	
3) POSS CS CLASS A	94C-34	

T/F DEAN Letts, Jr T/F James G. More

Arrest Date 06/02/2004	Time 18:30	Arrest Location 41/WESTEN ST	Arresting Officer 1 POLICE / OTHER	Arresting Officer 2 POLICE / OTHER	Domestic Violence? NO
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CONTROL

Booking Date 06/02/2004	Time 20:02	Booking Officer SKINNER, MICHAEL G	Cell No. 2	Matron	Police Department on Warrant
Rights given by <i>SET #49</i> BUTLER, JOSEPH J		Visible Injuries? NO	Comments		
Searched by POLICE / OTHER		No. Codefendants	Codefendant(s) Name(s)		

JUVENILE

Person to notify	Relationship	Address	Telephone No.	Date/time notified
Probation Officer	Release or Hold	Notified by	Juvenile released to (Signature)	

RELEASE

I was informed of my right to remain silent, to use a telephone, at my own expense, for the purpose of communicating with family or friends, to arrange bail or to call an attorney.	Arrestee Signature <i>X John H. More</i>
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Telephone used? (yes or no)	Bail Amount \$1700 -	Date/time Released 6/21/04	Released by <i>[Signature]</i>
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EXHIBIT D



Brockton Hospital
680 Centre Street
Brockton, Massachusetts 02302-3395



RETURN SERVICE REQUESTED

1769

JOHN HANDY
41 WESTON ST
BROCKTON, MA 02301

CASUSMS 02301

014

014

PROBATION OFFICE
THE BROCKTON TRIAL COURT
DISTRICT COURT DEPARTMENT, BROCKTON DIVISION
215 MAIN STREET
P. O. BOX 7610
BROCKTON, MA 02303-7610

PLANO
18001-781-838
3303
Canton 50b
18001-781-838
Interview
Monday John Handy Jr
100px 41 Weston St
Brockton MA
02301
Turnpike
canton
ST
X
138
LA



02301+3332 ######

RETURN THIS PORTION WITH PAYMENT.



05/07/04

ENCLOSED IS MY PAYMENT FOR \$143.00

100 GROVE STREET, SUITE 112
WORCESTER, MA 01605-2629

RETURN SERVICE REQUESTED

#003684190024669#
JOHN HANDY
41 WESTON ST
#1
BROCKTON MA 02301-3332

100 GROVE STREET, SUITE 112
WORCESTER, MA 01605-2629